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GOVERNMENT OF THE STATE OF PENANG v. MINISTER OF HOME AFFAIRS & ORS

HIGH COURT MALAYA, PULAU PINANG
HADHARIAH SYED ISMAIL J
[APPLICATION FOR JUDICIAL REVIEW NO: 25-8-01-2015]
B 16 DECEMBER 2016

ADMINISTRATIVE LAW: *Judicial review – Application for – Application to quash order issued by Minister in declaring society unlawful – Whether society lawfully established – Discretionary powers of Minister in declaring society unlawful –* C *Whether discretion absolute and unfettered – Whether Minister required to hear representations before declaring society unlawful – Societies Act 1966, ss. 2, 5 & 6 – Local Government Act 1976, ss. 2, 13 & 101(v)*

UNINCORPORATED ASSOCIATIONS: *Societies – Judicial review – Application to* D *quash order issued by Minister in declaring society unlawful – Whether society lawfully established – Discretionary powers of Minister in declaring society unlawful – Whether discretion absolute and unfettered – Whether Minister required to hear representations before declaring society unlawful – Societies Act 1966, ss. 2, 5 & 6 – Local Government Act 1976, ss. 2, 13 & 101(v)*

E An alleged assault between a man and members of Pasukan Peronda Sukarela Pulau Pinang ('the PPS') which was politicised led the police to issue a statement that it would investigate the activities of the PPS and take action. Following that, the PPS members who participated in a march during Merdeka day celebrations were ambushed by the police and 154 of them were escorted to the police station. The first respondent then issued an order F pursuant to s. 5 of the Societies Act 1966 ('the Act'), declaring the PPS as an unlawful society ('the order'). In the present application for judicial review, the applicant sought to quash the order on the ground that it was a nullity as (i) the PPS was lawfully established by the State Government under s. 101(v) of the Local Government Act 1976 ('the LGA'); (ii) the PPS was G not a society within the meaning of the Act and therefore did not come within its ambit and scope; (iii) although s. 5(1) of the Act stipulates that the first respondent has the absolute discretion to declare unlawful any society, the first respondent must provide reasons for the decision; and (iv) the PPS was not accorded the opportunity to make representations before the first H respondent made the order.

Held (dismissing application with costs):

(1) A State Government does not fall within ss. 2 and 13 of the LGA. A State Government is not a corporation and cannot claim that they have I the power under s. 101(v) of the LGA to form the PPS because the said section does not confer on them such power. The applicant might have good intention and lawful purpose in forming the PPS. However, these were not sufficient as the PPS was formed in contravention of the law. (paras 26 & 44)

(2) The PPS is an association of persons of more than 9,000 members. Therefore, it is a society under s. 2 of the Act as it falls within the description of an association of seven or more persons. Since the PPS is a society, it is subjected to the requirements of the Act. The first and foremost requirement, as expressly stated under s. 6 of the Act, was that a society must be registered. Based on s. 6(2) of the Act, the PPS being a non-registered society, could not organise or take part in any activity of or on behalf of the society. The PPS and its members had been carrying out their activities since its inception in 2011. Therefore, the PPS had contravened s. 6(1) and (2) of the Act. (paras 30 & 31)

(3) The words used in s. 5 of the Act are 'absolute discretion'. This means that the first respondent was given an unfettered discretion to declare the PPS unlawful. It was solely his decision. The court could not go behind the decision and substitute the same with its own decision. Furthermore, the first respondent had taken into consideration relevant facts before satisfying himself that the PPS was being used for purposes prejudicial to public safety. Therefore, his decision was not perverse. (para 40)

(4) Given the literal interpretation to s. 5(1) of the Act, the first respondent was not required to hear evidence from the applicant before he made the order. Since there was no such duty imposed on the first respondent, the applicant could not argue that they were deprived of an opportunity to be heard. The applicant could not claim for a right which did not exist. (para 43)

Case(s) referred to:

Dato' Ambiga Sreenevasan & Ors v. Menteri Dalam Negeri & Ors [2012] 7 CLJ 43 HC ***(refd)***

Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan & Other Appeals [1997] 1 CLJ 665 CA ***(refd)***

Nordin Hj Zakaria (Timbalan Ketua Polis Kelantan) & Anor v. Mohd Noor Abdullah [2004] 2 CLJ 777 FC ***(refd)***

Pendaftar Pertubuhan v. Datuk Justin Jinggut [2013] 2 CLJ 362 FC ***(refd)***

Pengarah Tanah dan Galian Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1978] 1 LNS 143 FC ***(refd)***

Rohana Ariffin v. Universiti Sains Malaysia & Another Case [1988] 1 CLJ 559; [1988] 2 CLJ (Rep) 390 HC ***(refd)***

Tan Tek Seng @ Tan Chee Meng v. Suruhanjaya Perkhidmatan Pendidikan & Anor [1996] 2 CLJ 771 CA ***(refd)***

Legislation referred to:

Criminal Procedure Code, s. 27(1)
Federal Constitution, art. 10(1)(c)
Local Government Act 1976, ss. 2, 9, 13, 101(v)
Rules of Court 2012, O. 53 r. 3(5)
Societies Act 1966, ss. 2, 5(1), 6(1), (2), 13(1)(c)(ix), 16(1)

For the applicant - Tommy Thomas & Ambiga; M/s Tommy Thomas
For the respondents - Shamsul Bolhassan; SFC

Reported by Najib Tamby

A

JUDGMENT

Hadhariah Syed Ismai J:

Introduction

B **[1]** This is an application by the State Government of Penang to quash the order of the first respondent made on 3 November 2014, declaring Pasukan Peronda Sukarela Pulau Pinang (PPS) as an unlawful society on the ground the order is a nullity. After hearing submission of both parties, I dismissed the application on 22 November 2016. I now give my reasons.

C **PPS: Its Formation And Role**

[2] PPS was formed at the Penang State Government Executive Council Meeting (Majlis Mesyuarat Kerajaan) (MMK) on 27 April 2011. The MMK Bil. 16/2011 containing the proposal to form PPS was approved by MMK on 4 May 2011.

D **[3]** The objective of PPS is to assist the State Government to combat crime and to provide welfare, public safety and convenience to Penang residents. PPS was not formed with the intention of replacing the Royal Malaysian Police Force (PDRM).

E **[4]** All members of PPS are volunteers. The only power that members of PPS have are limited to s. 27(1) of the Criminal Procedure Code which allow for a private person to arrest a person, who in his opinion has committed a seizable offence or a non-bailable offence.

[5] As the objective of PPS is the welfare of the residents in the Penang F State, PPS is placed under the Welfare, Caring Society & Environment Portfolio of Penang State Executive Council. The Chairman of PPS is Mr Phee Boon Poh.

[6] PPS is funded by the annual allocations received from the State Government which are allocated to each State Assembly constituency as G follows:

(i) 1 PPS Unit - RM10,000

(ii) 2 PPS Unit - RM20,000

(iii) 3 PPS Unit - RM30,000

H

[7] There are no entrance, membership, annual or like fees because membership to PPS is on a free and voluntary basis. Members were given appointment certificate.

[8] The State Government provides PPS members with a vest and cap I bearing PPS logo.

[9] PPS units also conduct patrolling in their respective neighbourhood. For patrolling and other duties, PPS members must record it in the logbook provided by the State Government.

[10] As at 31 August 2014, there are 9002 PPS members and 299 PPS units.

Events happened

[11] On 17 August 2014, one Ong Eu Soon (Ong) alleged that he was assaulted by a group of individuals wearing purple vests whom he identified as PPS members in front of the Bandar Baru Air Itam market at about 11pm that night. He lodged a police report on the incident. PPS members, Lee Yew Kuen (Kuen) and Lee Chan Kwong (Kwong) from PPS Medan Angsana also lodged their respective police reports alleging Ong was the aggressor and they were merely defending themselves.

[12] This incident was politicised by a member of the Malaysian Chinese Association (MCA), one Huan Cheng Guan who called for PPS to be banned.

[13] Following that, on 27 August 2014, the second respondent issued a statement that the police would investigate the activities of PPS and take action.

[14] On 31 August 2014, more than 200 PPS members participated in a march for the Penang State level parade in conjunction with the Merdeka Day celebrations at the Esplanade in Penang. As soon as PPS members reached the State Legislative Assembly building, without warning, about 50 plain clothes policemen ambushed the PPS members and escorted 154 of them to Beach Street Police Station. The police also seized the PPS vests, membership cards and other items belonging to PPS members.

[15] The Chairman of PPS together with the Chief Co-Ordinating Officer of PPS, one Manickam a/l Alagappan were also arrested.

[16] On 3 November 2014, the first respondent issued an order which reads as follows:

SOCIETIES ACT 1966

ORDER UNDER SECTION 5

WHEREAS I am of the opinion that the Pasukan Peronda Sukarela Pulau Pinang (PPS) is being used for purposes prejudicial to public order;

NOW THEREFORE, in exercise of the powers conferred by subsection 5(1) of the Societies Act 1966 [Act 335], I hereby declare that the Pasukan Peronda Sukarela Pulau Pinang (PPS) is an unlawful society with effect from 3 November 2014.

Made 3 November 2014 — DATO' SERI DR AHMAD ZAHID BIN HAMIDI

[KDN. PUU/8/14; PN(PU 2) 196/IV] — Minister of Home Affairs

A **Reliefs Sought**

[17] On 27 January 2015, the applicant filed this application for judicial review, seeking for the following reliefs:

(a) A declaration that Pasukan Peronda Sukarela (PPS) was lawfully and
B properly established by the applicant;

(b) A declaration that PPS is not a society within the meaning of the Societies Act 1966;

(c) An order of *certiorari* to remove into this court for the purposes of being quashed forthwith the order dated 3 November 2014 (the impugned
C order) by the first respondent purportedly declaring PPS an unlawful society;

(d) An order of prohibition prohibiting the respondents, their servants, officers, agents or otherwise however, from:

D (i) entering any of the premises of the PPS;

(ii) searching any of the premises of the PPS;

(iii) arresting and/or detaining any member of PPS and seizing any property belonging to PPS.

E (e) An order of *mandamus* compelling the respondents, their servants, officers, agents or otherwise howsoever to release to PPS all vests, equipment, seals, insignia, arms, document or other object whatsoever, whether or not bearing the logo and words PPS belonging to the applicant;

F (f) An order pursuant to O. 53 r. 3(5) of the Rules of Court 2012 staying the impugned order pending the final disposal of this application;

(g) General damages;

(h) Aggravated and/or exemplary damages;

G (i) Costs; and

(j) Such further or other reliefs as this court considers just.

Grounds For Judicial Review

H **[18]** The impugned order was challenged on the following grounds:

(i) PPS is lawfully established by the State Government under s. 101(v) of the Local Government Act 1976.

(ii) PPS is not a society, within the meaning of the Societies Act and
I therefore does not come within its ambit and scope.

(iii) PPS is a mechanism by the applicant which complements the PDRM and other Government and law enforcement agencies.

(iv) PPS was not given an opportunity to make representations before the first respondent made the impugned order.

[19] It is trite law that judicial review is not an appeal from a decision but a review of how a decision was made. With that principle of law in mind, I shall now proceed to examine whether there are merits in the grounds advanced by the applicant.

The First Ground

[20] Mr Tommy Thomas, acting for the applicant submits PPS was formed under s. 101(v) of the Local Government Act 1976 which reads:

> In addition to any other powers conferred upon it by this Act or by any other written law, a local authority shall have power to do all or any of the following things, namely
>
> ....
>
> (v) to do all things necessary for or conducive to the public safety, health and convenience.

[21] Extending further, he also relied on s. 9 of the Local Government Act which reads:

> 9. Power of the State Authority to issue directions.
>
> (1) The State Authority may from time to time give the local authority directions of a general character, and not inconsistent with the provisions of this Act, on the policy to be followed in the exercise of the powers conferred and the duties imposed on the local authority by or under this Act in relation to matters which appear to the State Authority to affect the interests of the local authority area, and the local authority shall as soon as possible give effect to all such directions.
>
> (2) The local authority shall furnish the State Authority with such returns, accounts and other information with respect to the property and activities of the local authority as the State Authority may from time to time require.

[22] In response, Senior Federal Counsel, En Shamsul Bolhassan argued that the applicant's reliance on both ss. 101(v) and 9 of the Local Government Act 1976 is devoid of merit. As for the former, it was submitted that local authority does not include the State Government. As for the latter, it was submitted that there is no evidence in the applicant's affidavit to show that the power under s. 9 has been exercised.

[23] Since the applicant is saying PPS is formed by the State Government under s. 101(v) of the Local Government Act 1976, it is pertinent to know what is local authority and whether it refers to State Government as alleged by the applicant.

[24] Local authority is defined in s. 2 of the Local Government Act 1976 as:

> Any City Council, Municipal Council or District Council, as the case may be, and in relation to the Federal Territory means the Commissioner of the City of Kuala Lumpur appointed under section 3 of the Federal Capital Act 1960.

[25] A local authority is a corporation or body corporate. This is provided for in s. 13 of the Local Government Act 1976 which reads:

> 13. Local authorities to be corporations.
>
> Every local authority shall be a body corporate and shall have perpetual succession and a common seal, which may be altered from time to time, and may sue and be sued, acquire, hold and sell property and generally do and perform such acts and things as bodies corporate may by law do and perform.

[26] Based on the above definitions, it is clear that a State Government does not fall within ss. 2 and 13 of the Local Government Act 1976. State Government is not a corporation. This being the case, the State Government cannot claim they have the power under s. 101(v) of the Local Government Act 1976 to form PPS because that section does not confer on them such power. Therefore, the first ground must fail.

The Second Ground

[27] There is no dispute that PPS is not registered under any written law. In this regard, Mr Tommy Thomas submitted that PPS is an unincorporated association and has no legal entity. He also argued that PPS was not intended to be a society. Hence, Societies Act 1966 is not applicable. It was therefore, submitted that the first respondent's order is in breach of art. 10(1)(c) of the Federal Constitution which states all citizens have the right to form an association. In his answer to all these allegations, Senior Federal Counsel submits PPS cannot exist in vacuum and its description fulfils the definition of a society under the Societies Act 1966.

[28] Now, whether PPS is a society or not, reference must be made to the Societies Act 1966 (the Act) because that is the specific law governing society.

[29] In s. 2 of the Act, the word "society" is defined

> "society" includes any club, company, partnership, or association of seven or more persons whatever its nature or object, whether temporary or permanent, but does not include
>
> (a) any company registered under the provisions of any written law relating to companies for the time being in force in Malaysia;
>
> (b) any company or association constituted under any written law;

(c) any trade union registered or required to be registered under the provisions of any written law relating to trade unions for the time being in force in Malaysia;

(d) any company, association or partnership formed for the sole purpose of carrying on any lawful business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof;

(e) any co-operative society, registered as such, under any written law;

(f) any organization or association in respect of which there is for the time being in force a certificate (which may be granted, refused or cancelled at his discretion) by a person or authority appointed under the provisions of the written law for the time being inforce relating to the registration of schools that such organization or association forms part of the curriculum of a school; or

(g) any school, management committee of a school, parents' association or parent-teachers' association registered or exempted from registration under any law for the time being in force regulating schools.

[30] In *Dato' Ambiga Sreenevasan & Ors v. Menteri Dalam Negeri & Ors* [2012] 7 CLJ 43, Her Ladyship Rohana Yusuf J (now JCA) held Coalition for Clean and Fair Election (BERSIH), which constituted of a coalition of various organisations is a society within s. 2 of the Act and therefore the Minister has the power to declare it unlawful under s. 5 of the same Act. Similarly, in the present case, applying the definition in s. 2, PPS is an association of persons of more than 9,000 members. Thus, it falls within the description of "association of seven or more persons". Based on the definition, it is clear that PPS is a society under s. 2 of the Act. Since, in law, PPS is a society, it is subjected to the requirements of the Act. The first and foremost requirement under the Act is a society must be registered. This requirement is expressly stated in s. 6 of the Act which reads:

6. (1) Every local society other than that in respect of which an order made under section 5 is in force shall, in the manner prescribed make application to the Registrar for registration under this Act.

(2) Until a local society is registered under this Act, no person shall, without a written permission of the Registrar, organise or take part in any activity of or on behalf of the society, except only to apply to, or correspond with the Registrar.

(3) Any person committing a breach of subsection (2) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit, and where the breach is a continuing one to a fine not exceeding five hundred ringgit for every day after the first day during which the breach continues.

[31] Based on the provisions of s. 6(2) of the Act, PPS being a non-registered society, it cannot organise or take part in any activity of or on behalf of the society. In this case, it is not disputed that PPS and its members have been carrying out their activities since its inception in 2011. Therefore, PPS has contravened s. 6(1) and (2) of the Act.

The Third Ground

[32] Now, the first respondent order which declared PPS an unlawful society was made pursuant to s. 5 of the Act which reads:

> 5. (1) It shall be lawful for the Minister in his absolute discretion by order to declare unlawful any society or branch or class or description of any societies which in his opinion, is or is being used for purposes prejudicial to or incompatible with the interest of the security of Malaysia or any part thereof, public order or morality.
>
> (2) An order made under this section shall be published in the *Gazette* and shall operate to cancel immediately the registration of any such society or societies, if already registered under this Act; and no society against which an order made under this section applies shall be so registered.
>
> (3) The provisions of section 17 shall apply in respect of a local society affected by the order made under this section.

[33] Mr Tommy Thomas argued the impugned order is *ultra vires* the Societies Act since PPS does not pose any threat to public order. He also argued that, to the contrary, PPS was established to complement PDRM. He further argued that prior to the impugned order being made, PDRM had been interacting and dealing with PPS and never accused PPS of being unlawful society or of posing a threat to public order. Hence, it was submitted that the first respondent had overreacted in this case. In this regard, he quoted a passage of a judgment of Her Ladyship Justice Rohana J (now JCA) in *Dato' Ambiga Sreenevasan & Ors v. Menteri Dalam Negeri & Ors* [2012] 7 CLJ 43 as follows:

> Whilst it can be argued that the prerogative to act against unlawful society or otherwise remains with the respondents, it must be borne in mind that an order made under s. 5 of the Oct impinges upon the right and liberty of an individual, guaranteed under the Federal Constitution, in particular the right to assembly in art. 10. The respondent cannot therefore treat the order in a cavalier manner on one hand, saying that BERSIH is an unlawful society because it has been used for purposes prejudicial to the interest of the Security of Malaysia as well as public order on 1 July 2011, and on the other hand allowed its planned rally to be carried out eight days later on 9 July 2011. it is difficult to reconcile how a society found to be used by a political party for purposes threatening public security on I July 2011 can be allowed to organise a peaceful assembly on 9 July 2011.
>
> Instead of being subjected to the various provisions under the Act in tandem with the pronouncement of it as unlawful, the opposite happened. Right after the declaration by the Minister, the Steering Committee

Chairman was given a royal audience by YDPA on 5 July 2011 to discuss the planned rally. BERSIH was in fact at the table of negotiation with the respondent's representative right after the said order, trying to resolve on how and where the planned rally should be held. Let us not forget that at the material time no peaceful assembly could have been held without the permit of the police under the Police Act 1967. This whole episode brought into question as what it the meaning of an unlawful society *viz*: can an unlawful society which is prejudicial to public order and public security be given permit to organise a peaceful assembly; if no permit is granted, how does one explain the big rally that took place on 9 July 2011 without any legal hindrance; is the public therefore put under threat to public order and security by such an unlawful assembly organised by an unlawful society; Finally, how does unlawful society which threatens public order and security be allowed to carry on as normal.

In the upshot the conduct of the respondents in dealing and handling BERSIH soon after it was being outlawed in fact do not reflect BERSIH as an unlawful society, but It connotes something else. It does not at all reflect the conduct of persons who found the society to be used for the "purposes prejudicial to the interest of the security of Malaysia and public order". issue of public security is a serious one and BERSIH after been declared to be unlawful for such reason cannot be treated in such a fight manner.

The reason of public Security for issuing a declaration under s. 5 cannot change within days. It cannot be a case that a society is a threat to public security on 1 July 20ft and then no longer so, soon after that. The respondent cannot be blowing hot and cold at the same time. However, if the reason of public security had since ceased then the declaration should be lifted accordingly.

The decision to outlaw BERSIH impinges on the rights guaranteed under the Federal Constitution and should not be taken in just a lackadaisical manner. If BERSIH is found to be a threat to the security of the nation, the conduct of the respondents in treating BERSIH certainty does not reflect such. In my view two things could have happened which brought upon this situation;

(i) either BERSIH was initially found to be a threat to public order and security, then a week later it was no longer a threat; or

(ii) the decision to declare BERSIH unlawful, was made without taking info account some relevant facts or by taking into account some irrelevant facts.

In either case the decision to declare BERSIH unlawful becomes questionable, it is for this reason, I hold the view that the decision in finding BERSIH unlawful is tainted with irrationality ...

…

The ground of irrational has been accepted as a ground to quash an administrative decision.... It is now accepted as a ground on its own on which a decision may be attacked by judicial review.

[34] With the greatest of respect, I disagree with him. In *Dato' Ambiga's* case, the High Court held the Minister's order in declaring BERSIH unlawful society, is questionable because, despite the order being made, BERSIH is allowed to carry out its rally eight days later. For this reason, the court held the Minister's order in finding BERSIH unlawful is tainted with irrationality and the order is quashed. The facts in the present case are different. In this case, prior to the issuance of the impugned order, the police have arrested some members of PPS. Pursuant to s. 6(2) of the Act, members of PPS cannot organise or take part in any activity on behalf of PPS without written permission from the Registrar of Society. With the impugned order, PPS is banned from continuing with its activities. Upon being declared as an unlawful society, PPS no longer exist from 3 November 2014. There is no evidence that the respondents had allowed PPS to continue carrying out their activities even after the order dated 3 November 2014 was made. So, to compare BERSIH's case to PPS's case is like comparing apples to oranges.

[35] The first respondent had given his reasons as to why he said PPS is being used for purposes prejudicial to public order. In his affidavit in reply, the first respondent deposed:

(a) In reply to paras. 11 to 28 of the applicant's affidavit [1], I state that although PPS was originally established to carry out community-based voluntary activities for the State Government, before the said order dated 3 November 2014 was issued by me, I was satisfied that PPS is an unlawful society and at the material time was being used for a purpose that is prejudicial to public order.

(b) Further, in reply to paras. 29 to 44 of the applicant's affidavit [1], I state as follows:

(i) PPS is a society that was never registered under the Societies Act 1966;

(ii) there are police reports which have been lodged by the public against PPS containing reports on the behaviour and action of PPS members against members of the public involving cases on altercations and assaults which have created an atmosphere of anxiety and fear amongst members of the public and which can affect public peace and harmony;

(iii) several arrests and investigations by PDRM have found that there are PPS members who have criminal/drug records who are wanted by PDRM and there are those who have been identified positive for drugs;

(iv) PPS has been found to be awarding ranks and classes for appointed positions for the carrying out of enforcement duties akin to a member of the police force and a police officer. The uniform attire

with rank insignia worn by PPS members is a breach of the law because in the context of a society or organisation which is based on the concept of the use of a uniform other than security and law enforcement agencies, PPS did not obtain any permission or approval from the Registrar of Societies as specified under the Societies Act 1966;

(v) PPS has been found to be carrying out activities that assume the jurisdiction and duty of the police or other enforcement agencies whereby PPS members do not have the power to arrest persons whether for the purpose of inspection or for the prevention of crime while carrying out their patrols purportedly to prevent crime.

[36] Although s. 5(1) says it is the absolute discretion of the Minister to declare unlawful any society, Mr Tommy Thomas argued the first respondent's discretion is not unfettered in that the first respondent must give reasons for his decision. He cited four cases as follows:

(i) *Pengarah Tanah dan Galian Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1978] 1 LNS 143; [1979] 1 MLJ 135.

(ii) *Rohana Ariffin v. Universiti Sains Malaysia* [1988] 1 CLJ 559; [1988] 2 CLJ (Rep) 390; [1989] 1 MLJ 487.

(iii) *Tan Tek Seng @ Tan Chee Meng v. Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 2 CLJ 771; [1996] 1 MLJ 261.

(iv) *Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan & Other Appeals* [1997] 1 CLJ 665; [1996] 1 MLJ 481.

[37] For the respondents, Senior Federal Counsel argued the discretionary power conferred by law to the first respondent is to be exercised by the first respondent according to his satisfaction. Thus, it was submitted that the court cannot review the merits of the decision of such nature and substituted with its own decision. In this regard, he referred to two cases:

(i) *Pendaftar Pertubuhan v. Datuk Justin Jinggut* [2013] 2 CLJ 362; [2013] 3 MLJ 16.

(ii) *Nordin Hj Zakaria (Timbalan Ketua Polis Kelantan) & Anor v. Mohd Noor Abdullah* [2004] 2 CLJ 777.

[38] Having read the cases cited by both parties, I find the cases referred to by Mr Tommy Thomas are not applicable in this case because none of those cases, touch on the issue of absolute discretion or whether the court can substitute its own decision in place of the decision-maker. Instead, the cases cited by the Senior Federal Counsel is of assistance to this court. In *Pendaftar Pertubuhan v. Datuk Justin Jinggut* [2013] 2 CLJ 362; [2013] 3 MLJ 16, the

Registrar of Society (ROS) has cancelled the registration of a political society, Parti Kebangsaan Sarawak (SNAP) under s. 13(1)(c)(ix) of the Societies Act 1966 for its failure to comply with a notice under s. 16(1) of the same Act issued by ROS. Section 16(1) reads:

> 16(1) If the Registrar is of the opinion that a dispute has occurred among members or office bearers of a registered society as a result of which the Registrar is not satisfied of the identity of the persons who have been properly constituted as office bearers of the society, the Registrar may serve notice on the society requiring the society, within one month of the service of such notice, to produce to him evidence of the settlement of any such dispute and of the proper appointment of the lawful office bearers of the society or of the institution of proceedings for the settlement of such dispute.

[39] The ROS decision was challenged on the grounds (i) the ROS did not give reasons for his decision; and (ii) the respondents were not given a right to be heard. The High Court held ss. 16 (1) and 13 of the Act did not require ROS to give reasons for his decision nor did they give the respondent a right to be heard before the ROS could form an opinion that a dispute had occurred or that ROS was not satisfied of the identity of persons who had been properly appointed as office bearers. The High Court's decision was overturned by the Court of Appeal on the ground ROS had acted in excess of his jurisdiction. On further appeal, the Federal Court restored the decision of the High Court. Under held [3] at page 17, the Federal Court held:

> [3] The court could not go behind the opinion stated by ROS and based on the factual background, make its own finding on the validity of the dispute as this would be usurping the limited powers of ROS under section 16 (1) and substituting its opinion in place of the subjective opinion of ROS. In any event, s 18C of the Act excluded the jurisdiction of the Courts from going into the merits of any disputes between members of a political party.

[40] It is important to note that in *Datuk Justin Jinggut*'s case, the High Court and Federal Court give literal interpretation to the word "opinion" and "is satisfied". Whereas, in this case, the word used in s. 5 is "absolute discretion". This means the Minister is given an unfettered discretion to declare PPS unlawful. It is solely his decision. This court cannot go behind the decision and substitute with its own decision. Based on the first respondent's affidavit in reply, I find the first respondent has taken into consideration relevant facts before satisfying himself that PPS is being used for purposes prejudicial to public safety. Therefore, his decision is not perverse.

The Fourth Ground

[41] The applicant contends they were not given an opportunity to make representations on the legality of PPS before the first respondent made the impugned order. The very same contention was raised in *Datuk Justin Jinggut*'s case. On this issue, the Federal Court held:

> [5] ROS had not acted arbitrarily in this case. The decision to de-register SNAP was consequential to SNAP's failure to comply with the s 16 (1) notice. Once the conditions stated in the s 16 (1) notice were not satisfied, the operation of s 13 was triggered. No reasons were required or needed to be given under the law. ROS was not required to conduct any formal hearing before he exercised his power under s. 13. No presentation of testimony, evidence or arguments was needed. It was not a judicial adjudication process.

[42] In *Nordin Hj Zakaria (Timbalan Ketua Polis Kelantan) & Anor v. Mohd Noor Abdullah* [2004] 2 CLJ 777, the respondent was dismissed from the Royal Malaysia Police after a disciplinary proceeding found him guilty. He sued the appellant, contending there was procedural unfairness in the disciplinary proceedings conducted by the appellant because the appellant did not inform the respondent, before the commencement of the proceedings, that he could be punished with dismissal or a reduction in rank if he were to be found guilty. In allowing the appeal, at p. 779, the Federal Court held:

> There is nothing in the 1970 Regulations that requires or entitles the respondent to be informed before the commencement of the orderly room procedure that he might be punished with dismissal or a reduction in rank if he were to be found guilty. As there is no provision in the 1970 Regulations imposing an obligation similar to that prescribed by s. 28(1) of the 1993 Regulations, the appellant could not be said to have deprived the respondent of procedural fairness by not so informing the latter. There cannot be a breach of duty where none exists in law.

[43] Similarly, in this case, given a literal interpretation to s. 5(1), the first respondent is not required to hear evidence from the applicant before he made the impugned order. The court cannot add new words to s. 5(1). Since there is no such duty imposed on the first respondent, the applicant cannot say they were deprived of an opportunity to be heard. The applicant cannot claim for a right which does not exist. On this ground alone, the fourth ground also must fail.

Conclusion

[44] The applicant may have good intention and lawful purpose in forming PPS. But, these are not sufficient. PPS was formed in contravention of the law. This court cannot condone PPS's illegal acts. For these reasons, the applicant's application is dismissed with no order as to cost.